KM S Kumarappan Chettiar v S Ramasamy s/o KM S Chockalingam

HIGH COURT (ALOR SETAR) — ORIGINATING SUMMONS NO 24–839 OF 2000
VINCENT NG J
29 JULY 2000

Land Law *— Ownership — Dispute — Co-ownership — Termination of co-ownership — Partitioning of land — Co-owner refusing to agree or participate in partitioning of land — Whether court could order partitioning — Whether co-owner obliged to make choice of plots — Criteria for allowing partitioning of land where co-owner does not consent*

The parties were brothers having jointly inherited a plot of land from their late father. The parties thus became registered co-proprietors of the land. The plaintiff sought to terminate the co-ownership of the land. He proposed to have the land partitioned by an exactly equal division of the said land. The plaintiff offered the defendant the first choice of either of the two plots, with the plaintiff assuming ownership of the remaining portion. The defendant objected to the application on the ground that there were disputes and misrepresentations of fact on the part of the plaintiff. The defendant argued, inter alia, that the plaintiff did not have a right to inherit from the estate.

Held, allowing the application:

(1) The land was owned and registered in the names of the parties. Under s 340(1) of the National Land Code 1965 ('the NLC') the plaintiff's ownership of the undivided share of the land was indefeasible and could not be questioned by any party including the defendant. Furthermore, the defendant had compromised an earlier suit filed by him by the entry of a consent judgment whereby he agreed and confirmed that the estate of his late father had been duly administered and that the plaintiff and the defendant were the only beneficiaries of the estate entitled to a half share each. It was too late in the day to deny the plaintiff's right of inheritance or to allege any misrepresentation as to the administration of the estate (see pp 685E–686A).

(2) As the defendant refused to join in or consent to an application under s 140 of the NLC, the plaintiff was right to make his application under s 145(1)(a) of the NLC. The defendant's failure to respond to an invitation to partake of the subdivision was sufficient to trigger the operation of the 'deeming provision' in s 145(2)(a) of the NLC. As this was not an application under s 145(2)(b) or (c) of the NLC and the difference in the value of the respective portions of the land was not in issue, no valuation of the property was required (see p 686B–D).

(3) The only issue was whether the proposed subdivision was fair. The proposed partition was reflected in a plan prepared by a

qualified chartered surveyor, each portion measuring 7.101 hectares. The defendant would be given the first option to select either of the two portions and the plaintiff would assume ownership of the other. It had not only been shown that the termination of the co-ownership of the property was the proper solution but also that the terms proposed were fair (see p 686E–F).

[Bahasa Malaysia summary

Pihak-pihak merupakan adik-beradik yang telah mewarisi satu plot tanah daripada mendiang ayah mereka. Maka pihak-pihak menjadi pemilik bersama berdaftar tanah tersebut. Plaintif berniat menamatkan milikan bersama tanah tersebut. Beliau bercadang supaya tanah tersebut dibahagikan kepada bahagian-bahagian yang sama luas. Plaintif menawarkan pilihan pertama dua plot itu kepada defendan, dengan plaintif mendapat milikan bahagian yang satu lagi. Defendan membantah terhadap permohonan tersebut atas alasan bahawa wujudnya pertikaian dan salah nyata fakta di pihak plaintif. Defendan berhujah, antara lain, bahawa plaintif tidak berhak mewarisi harta pusaka tersebut.

Diputuskan, membenarkan permohonan tersebut:

(1) Tanah tersebut dimiliki oleh dan didaftarkan atas nama pihak-pihak yang terlibat. Di bawah s 340(1) Kanun Tanah Negara 1965 ('KTN') milikan plaintif ke atas bahagian tanah yang belum dibahagikan adalah tidak boleh disangkal dan tidak boleh dipersoalkan oleh mana-mana pihak termasuk defendan. Tambahan pula, defendan telah berkompromik satu guaman yang lebih awal yang difailkannya menerusi satu kemasukan penghakiman persetujuan di mana beliau bersetuju dan mengesahkan bahawa harta pusaka mendiang ayahnya telah ditadbirkan sewajarnya dan bahawa plaintif dan defendan merupakan wasi tunggal harta pusaka yang berhak mendapat setengah bahagian setiap orang. Adalah terlampau lewat sekarang untuk menafikan hak plaintif untuk mewarisi atau untuk mengatakan sebarang salah nyata mengenai pentadbiran harta pusaka tersebut (lihat ms 685E–686A).

(2) Oleh kerana defendan enggan menyertai atau bersetuju kepada satu permohonan di bawah s 140, plaintif betul dalam membuat permohonannya di bawah s 145(1)(a) KTN. Kegagalan defendan untuk membalas kepada jemputan menyertai pembahagian kecil memadai untuk mencetuskan operasi 'deeming provision' dalam s 145(2)(a) KTN. Oleh kerana ini bukan satu permohonan di bawah s 145(2)(b) atau (c) dan perbezaan dalam nilai bahagian tanah masing-masing tidak menjadi isu, penilaian ke atas hartanah tersebut adalah tidak perlu (lihat ms 686B–D).

(3) Satu-satunya isu adalah sama ada pembahagian kecil yang dicadangkan adalah adil. Pembahagian yang dicadangkan dibayangkan dalam satu pelan yang disediakan oleh seorang juruukur terlatih dan yang berkelayakan sepenuhnya, dengan setiap bahagian berukuran 7.101 hektar. Defendan akan diberikan pilihan pertama untuk memilih salah satu daripada dua bahagian itu dan plaintif akan mengambil alih milikan bahagian yang satu lagi. Bukan sahaja telah ditunjukkan bahawa pemberhentian milikan bersama hartanah tersebut adalah penyelesaian yang wajar tetapi juga bahawa syarat yang dicadangkan juga adalah adil (lihat ms 686E–F).]

Notes

For cases on ownership generally, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reisssue) paras 2939–2945.

Legislation referred to

National Land Code 1965 ss 140, 145(1)(a), (2)(a), (b), (c), 340(1), (2)

Balakrishnan a/l KG Nair (*Thomas Bala & Associates*) for the plaintiff.

Dr S Ramasamy a/l KM S Chockalingam representing himself as the defendant.

Vincent Ng J: The parties in this case are siblings; the plaintiff being the elder brother and the respondent, the younger brother. The present dispute relates to a piece of land identified as Lot 1130, Geran 3899 Mukim Jitra, Daerah Kubang Pasu, Kedah ('the land') which the parties had inherited from the estate of their late father ('the estate'). By way of this originating summons, the plaintiff seeks to terminate the existing co-ownership and have the land partitioned thereby ensuring that each brother will have his respective individual lot.

After hearing the parties I allowed the application, resulting in the filing of this appeal by the defendant. Since this was not an uncontested application, I had to direct my mind to the following issues that call for determination in an application to the court to intercede by exercising its discretion to terminate co-proprietorship as empowered under s 145(1)(a) of the National Land Code 1965 ('the Code'), to wit: (a) is there any real or arguable dispute of title between or among the co-owners over the land concerned?; (b) are there any misrepresentations of fact in the application?; (c) is the proposed subdivision fair?; (d) should valuation of the comparative values of the individual portions of the land be ordered before determination of the issue? and (e) in all the circumstances of the case, is it desirable to order a partition of land? Obviously, all applications for partition of land must be accompanied by a survey plan prepared by a qualified surveyor, delineating in sufficient detail the precise demarcation of the individual portion or portions of the proposed partition.

A The defendant, appearing in person, had objected to the application on the grounds that there were disputes and misrepresentations of fact on the part of the plaintiff. However, I note that although the defendant had, in his affidavit-in-reply (encl 7), made these allegations no details were provided save his bare assertion that the plaintiff does not have a right to inherit from the estate.

B But what is quite obvious, from the affidavits filed by both parties, is that there is bad blood between them. In encl (9), an affidavit filed by the plaintiff in reply to the defendant's affidavit, the plaintiff has candidly admitted that relations between his brother and him are bad and much of the ill-will ensued when the defendant took issue with the plaintiff on the C manner of administration and nature of distribution of their late father's estate. There have been mutual vitriolic and vituperative allegations of fraud, cheating and attempts at depriving each other of the rights of inheritance, which are clearly irreconcilable. Against such a backdrop, it is quite obvious that it is no longer feasible for this co-proprietorship of the land to continue. And, as the plaintiff is now advanced in age, it is quite D understandable that he, as the administrator of the estate, should desire to settle the administration before anything should befall him.

I perused all the affidavits thoroughly but could find no legitimate or arguable dispute pertaining to the respective undivided share registration of both parties. The land grant exhibited as exh KMS 1 to encl 2 (the E plaintiff's affidavit filed in support of the application) shows that the land is owned by and registered to each of the party in equal shares ie half share each. As s 340(1) of the NLC enshrines the principle of indefeasibility of title, the plantiff's ownership of the half ($^1/_2$) undivided share of the land cannot be questioned by any party including the defendant. And, there has never been any pointed challenge mounted by the defendant under s 340(2) F of the NLC against the plaintiff's title over half ($^1/_2$) undivided share of the land. The plaintiff's right is further supported by several material facts revealed in encl (9). However, in what may be construed only as an oblique challenge on title, the defendant had instituted proceedings against the plaintiff, taking issue on the manner of administration of the estate by the G plaintiff and also disputing the plaintiff's right of inheritance, vide Alor Star High Court Civil Suit No 23–11 of 1989. Even then, this suit concluded in the recording of a consent judgment exhibited as exh KMS-6 to encl (9). What is significant is that the terms recorded in the said consent judgment were couched in the following language:

H (1) The plaintiff (in that civil suit) hereby withdraws all allegations and claims to relief made against the defendant in these proceedings.

(2) The plaintiff hereby agrees and confirms that the estate of KMS Sockalingam Chettiar, deceased *has been duly administered and distributed by the defendant* in accordance with law and that *the plaintiff and the defendant are the only beneficiaries of the estate entitled equally to* I *all its assets as set out* in the grant of letter of administration on 8 May 1978 in Alor Setar High Court Petition No 220 of 1973. (Emphasis added.)

Having made that admission, I think it is now too late in the day for the defendant to deny the plaintiff his right of inheritance to their father's estate or to allege that the plaintiff had made any misrepresentation as to the same.

I am of the view that the plaintiff has rightly founded his application on s 145(1)(a) of the NLC due to the refusal by the defendant to join in or consent to the making of an application under s 140 of the NLC. The plaintiff exhibited as exh KMS-5 to encl 2 a letter dated 12 April 2000 wherein the defendant was invited to partake in a subdivision application to the Land Office. This letter failed to elicit or evoke any response from the defendant. This is sufficient to also trigger into operation the second limb of para (a) of s 145(2) of the NLC (deeming provision) which provides that '... any application for partition made by one or more of the co-proprietors in the terms specified in the order shall be deemed for the purposes of this Chapter to have been made by them all'. And I would further add here that evidence was adduced to show that, in 1977, the plaintiff had endeavoured to dispose of this land, which in fact resulted in a concluded treaty with a company identified as AIMA Development Sdn Bhd. This sale was, however, called off in 1998. In this application at hand, I would hold that no valuation is required as it is not an application under s 145(2)(b) or (c) of the NLC, and the difference in the intrinsic or inherent value of the respective portions of the land is not in issue.

Thus, the only issue left for me to consider is whether the proposed subdivision is fair to both parties. Annexure A in encl 1 (the originating summons itself) is a plan prepared by a qualified chartered surveyor. The proposed partition shows an exactly equal division of the land with each portion-lot measuring 7.101 hectares. The plaintiff proposes (and indeed sets out in his prayer) that the defendant be given the first option to select either of the two portion-lots the latter desires and the plaintiff will willingly assume ownership of the portion-lot that is left. To my mind, it has not only been demonstrated that termination of co-proprietorship of the land is eminently the proper solution, but the terms proposed and now ordered are more than fair to the defendant.

Thus, there can be no grounds for the defendant to object, and accordingly, I allowed the plaintiff's application with costs.

Application allowed.

Reported by Andrew Christopher Simon